

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
InterCall, Inc.)	
)	CC Docket No. 96-45
Request for Review of Decision)	
of the Universal Service Administrator)	
)	
_____)	

**COMMENTS OF INTERCALL, INC.
ON PETITIONS FOR RECONSIDERATION**

InterCall, Inc. (“InterCall”), through its undersigned counsel and pursuant to the Bureau’s *Public Notice*, DA 08-1875, respectfully submits these comments on the petitions for reconsideration of the *Conference Calling Classification Order*.¹

In the *Conference Calling Classification Order*, the Commission concluded, among other things, that “the audio bridging services provided by InterCall are telecommunications” and that “[all] stand-alone audio bridging service providers are providers of telecommunications that are required to contribute directly to the [Universal Service Fund.]”² Two petitions for reconsideration of this conclusion were filed.³

¹ *Request for Review by InterCall, Inc. of Decision of Universal Service Administrator*, Order, CC Docket No. 96-45, FCC 08-160 (rel. June 30, 2008) (“Conference Calling Classification Order”). See *Public Notice*, Comment Sought On Petitions For Reconsideration And Clarification Of The Commission’s InterCall Order Filed By Global Conference Partners, A+ Conferencing Ltd., Free Conferencing Corporation, And The Conference Group, DA 08-1875 (rel. Aug. 8, 2008).

² *Conference Calling Classification Order* at ¶¶ 7, 22.

³ Petition for Partial Reconsideration and Clarification of the *InterCall Order* of Global Conference Partners, CC Docket No. 96-45 (filed July 30, 2008) (“GCP Petition”); Petition for Reconsideration of A+ Conferencing, Ltd., Free

I. ALTHOUGH THE COMMISSION MAY REQUIRE AUDIO BRIDGING PROVIDERS TO CONTRIBUTE TO THE USF DIRECTLY, THE COMMISSION SHOULD RECONSIDER ITS CONCLUSION THAT AUDIO CONFERENCING IS “TELECOMMUNICATIONS”

Both GCP and A+ Conferencing contend that the Commission’s analysis of audio conferencing services is erroneous. Both petitioners contend that the Commission misapplied its information service definition and applicable precedent. If that precedent had been applied properly, both petitioners contend, the Commission should have classified InterCall’s audio bridging service as an information service.⁴

InterCall supports the request that the Commission reconsider, or clarify, its classification of stand alone conferencing. GCP is correct that the conferencing product, when viewed from the customer’s perspective, is an integrated information service. Under existing FCC precedent, an integrated product is treated as an information service even if individual elements, if they were offered on a non-integrated basis, would constitute telecommunications.⁵

The *Conference Call Classification Order* was too quick to conclude that conferencing features are not integrated with the element the *Order* concludes is telecommunications – transmission to the bridge. Conferencing service offers users a plethora of features and options – from recording capabilities and operator assistance to enhanced participant validation and calendar integration features. These features typically

Conferencing Corporation, and The Conference Group, CC Docket No. 96-45 (filed July 30, 2008) (“A+ Conferencing Petition”).

⁴ GCP Petition at 9 (“On reconsideration, the Commission should properly conclude ... that the InterCall service is an information service”); A+ Conferencing Petition at 10 (“The Commission must reconsider its decision, and upon reconsideration, find and conclude that audio bridging providers are not telecommunications providers”).

⁵ See, e.g., *NCTA v. Brand-X*, 545 US 967 (2005).

are made available to users in various bundled packages, most often priced on a single per minute of use basis regardless of which feature is active or inactive at any given time.

Although these features may be used (or not used) at the conference host's discretion, the features are in fact available at all times and are designed to work seamlessly *with* the audio bridging service so that a user activating any of these features receives both the audio capability and the feature simultaneously. The features, in other words, are integrated with the core conferencing elements and with the transmission link between the participant and the conference bridge itself. InterCall agrees with GCP and A+ Conferencing that the level of integration here is consistent with that found in the *Brand-X* case.

This integration of the features with audio capabilities renders inapposite the *Prepaid Calling Card* order relied upon by the Commission.⁶ As A+ Conferencing notes, the menu-based services examined in the *Prepaid Calling Card Order* were available prior to completing a prepaid card call.⁷ Callers would select *either* sports, weather, etc. information *or* the telephone call option, but never use both simultaneously. By contrast, the recording and other features of audio bridging services are provided *in conjunction with* the audio conferencing functions of the service. Conference hosts who activate these features always use them in tandem with the audio conference itself.

More importantly, the only transmission identified by the Commission – the connection between the participant and the audio bridge – is not offered as a separate product by InterCall. InterCall argued in the proceeding that it does not “offer” this

⁶ *Regulation of Prepaid Calling Card Services*, Declaratory Ruling and Report and Order, 21 FCC Rcd 7290 (2006).

⁷ A+ Conferencing Petition at 11 (citing *Prepaid Calling Card Order*, 21 FCC Rcd at 7294, ¶ 11).

transmission, any more than Land's End offers transmission when it purchases toll-free service that customers use to order merchandise.⁸ InterCall does not offer transmission available for the user's own purposes, as an 800 reseller does; instead, it provides for transmission solely so that a user may reach the conferencing capabilities of the audio bridge. Moreover, as GCP notes (p. 18), this transmission component can only be used in conjunction with the audio bridging features themselves. As a result, under the *Brand-X* precedent, transmission to the bridge is integrated with the bridging function itself; it is not a separate offering of transmission by conference service providers ("CSPs").

Even if audio conferencing is an information service (which it is), the Commission still has discretion to add CSPs as direct contributors to USF under the permissive authority of Section 254(d). As InterCall contended all along, assuming that the minimum procedural requirements are satisfied, the Commission could conclude that it is in the public interest to for CSPs to contribute directly to the USF.⁹ If the Commission makes such a determination, InterCall submits that, on reconsideration, the Commission should bring conferencing providers into the USF under the permissive authority of Section 254(d). This approach is more consistent with existing precedent, including the precedent cited by GCP and A+ Conferencing.

Moreover, use of Section 254(d)'s permissive authority avoids imposition of potentially significant additional regulatory burdens on an industry that has thrived without regulation for over 25 years. The *Conference Calling Classification Order* has caused significant uncertainty in the industry already. The primary concern is the *Order's*

⁸ See InterCall Reply Comments at 18-19, CC Docket No. 96-45 (filed Mar. 3, 2008).

⁹ See InterCall Appeal, at 23-26.

conclusion that CSPs provide service on a private carrier basis and may be providing service on a common carrier basis.¹⁰ This open-ended finding raises the possibility that non-USF regulatory obligations may be imposed on the stand-alone conferencing industry. For example, CSPs might be required to apply for 214s, or to seek FCC approval to transfer customers or control of a conferencing entity. Similarly, if the FCC later classifies CSPs as common carriers, they would be subject to CALEA obligations, to detailed CPNI policies and procedures, TRS fees and a host of other obligations imposed only on telecommunications service providers. Such broad and burdensome requirements should not lightly be applied. Yet, no commenter has suggested that such burdensome regulation is necessary or appropriate in the conferencing industry today, which has operated on an unregulated basis since its inception. Indeed, as InterCall noted in its filings in this docket, even IXC-affiliated CSPs have not sought approval to purchase or sell conferencing businesses, nor have the major recipients of USF support treated their conferencing services as regulated services.¹¹

There is no justification for imposing such additional requirements on the industry. Therefore, the better course is to reverse the conclusion found in paragraph 7 of the *Order*, and find instead that stand-alone audio bridging providers will be added to USF via Section 254(d)'s permissive authority.

¹⁰ *Conference Calling Classification Order*, ¶ 7.

¹¹ InterCall Reply Comments at 6-7, 20-21.

II. THE COMMISSION ALSO SHOULD CLARIFY THAT THE TELECOMMUNICATIONS INVOLVED IN AUDIO BRIDGING IS THE TRANSMISSION TO THE AUDIO BRIDGE

InterCall also supports GCP's request that the Commission clarify paragraph 11 of the *Conference Calling Classification Order*. Paragraph 11 concludes, in relevant part, that:

[T]he service described by InterCall is telecommunications. As the Commission has recognized, 'the heart of 'telecommunications' is transmission.' InterCall's service allows end users to transmit a call (using telephone lines), to a point specified by the user (the conference bridge), without change in the form or content of the information as sent and received (voice transmission).¹²

The relative brevity of the Commission's discussion has had the unfortunate consequence of giving little guidance to CSPs seeking to comply with the *Order*. As the record in InterCall's appeal shows, and as is affirmed by the two petitions for reconsideration, audio bridging providers offer a wide variety of features and options to customers. CSPs need additional guidance from the Commission to determine which of these features involve the telecommunications that the Commission concluded is provided by CSPs. The key to that guidance is clarification of what, exactly, is the feature that rendered InterCall's audio bridging service to involve telecommunications.

Paragraph 11 suggests that this feature is the connection from the participant's location to the conference bridge. The Commission describes the audio bridging service as allowing end users to transmit a call *to the conference bridge*. That is, the Commission seems to rely solely on how the end user reaches the conference bridge. In

¹² *Conference Calling Classification Order*, ¶ 11 (internal citations omitted).

the Commission's analysis, then, because InterCall provides end users the means to reach this bridge, it is offering "transmission."

Further, paragraph 11 contrasts the "transmission" between the participant and the bridge with the audio bridge itself. The existence of the audio bridge, the Commission states, does not alter "this classification." Significantly, paragraph 11 speaks of the classification of InterCall's service separately from the actions of the audio bridge – the services performed by the bridge do not "alter" the classification arising from the transmission to the bridge. Again, this strongly suggests that the only element involving telecommunications is the connection between the participant and the bridge.

The means for this transmission, as provided by InterCall, is the purchase and use of end user toll-free services from IXCs. InterCall, for example, purchases toll-free service in order to enable end users to reach InterCall's services. Therefore, if the existence of "transmission" to the bridge is the element that constitutes "telecommunications," then the Commission should clarify its discussion in paragraph 11. Specifically, the Commission should clarify that a CSP provides telecommunications when it provides the means for a participant to reach its audio bridges via a telecommunications service. If a CSP purchases and uses toll-free telecommunications services to enable this connection, it is providing telecommunications to end users. If, on the other hand, a CSP does not arrange for the transmission used to reach the bridge, then it is not providing telecommunications. For example, if a CSP does not bundle long distance transport into its service and instead callers use their own service providers to reach the bridge, then the

CSP is not providing the transmission that is the “heart of telecommunications.”¹³

Similarly, if a participant uses a private network obtained from a third party to establish direct connections to a conference bridge, or if a participant uses non-interconnected VoIP services, the CSP is not providing telecommunications.

The Commission should clarify, further, that the functions of the audio bridge itself do not constitute telecommunications. The audio bridge does not enable transmission of information between the customer and the bridge – that is the function of the IXC’s switch in the case of toll-free services used to connect to the bridge.

Consequently, the revenues associated with functionalities of the bridge – such as recording, call control or web-based collaboration – are not subject to USF. Similarly, revenues associated with live operator assistance for registration, validation or call moderation also do not involve transmission to the bridge and thus do not constitute “telecommunications.”

The clarification is needed to permit CSPs to identify which of their services involve telecommunications and to determine how to identify the telecommunications revenues that are subject to USF obligations. By clarifying that the element that constitutes telecommunications is the transmission to the bridge, the Commission will provide a standard that CSPs may use to calculate end user revenues properly for USF reporting purposes.

¹³ Many of InterCall’s large business customers choose this configuration. In these instances, InterCall only provides the conference bridging services, not any transmission.

Respectfully submitted,

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